

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on April 4, 2005 at 3:30 P.M., in Room 102 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Rosalie (Rosie) Buzzas, Chairman (D)  
Rep. John E. Witt, Vice Chairman (R)  
Rep. Tim Callahan (D)  
Rep. Eve Franklin (D)  
Rep. Bill E. Glaser (R)  
Rep. Ray Hawk (R)  
Rep. Cynthia Hiner (D)  
Rep. Verdell Jackson (R)  
Rep. Christine Kaufmann (D)  
Rep. Walter McNutt (R)  
Rep. John L. Musgrove (D)  
Rep. Jon C. Sesso (D)  
Rep. John Sinrud (R)  
Rep. Janna Taylor (R)

**Members Excused:** None.

**Members Absent:** Rep. Carol C. Juneau, Vice Chairman (D)  
Rep. Joey Jayne (D)  
Rep. Ralph L. Lenhart (D)  
Rep. Penny Morgan (R)  
Rep. Rick Ripley (R)  
Rep. Jack Wells (R)

**Staff Present:** Marcy McLean, Committee Secretary  
Jon Moe, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: SB 108, 3/30/2005; SB 274,  
3/30/2005; SB 498, 3/30/2005

**HEARING ON SB 274****Opening Statement by Sponsor:**

**SEN. GREGORY BARKUS, SD 4, Kalispell**, opened the hearing on **SB 274**, a bill to revise mortgage originator licensing law to revoke exemption of mortgage bankers. He said that a new fiscal note, dated April 1, had been prepared but not yet distributed. SB 274 is a clean-up bill for legislation passed in the 2003 session. The purpose of that legislation was to regulate mortgage lenders, but exempted lenders who are originating four or less loans per year. In hindsight, that person who does so few loan originations is the person who probably most needs to be regulated. SB 274 would remove that exemption.

**{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.9; Comments: Reps. Jayne and Morgan entered hearing.}**

**Proponents' Testimony:**

**Christy Blazer**, said that last session Montana joined 45 other states in licensing and regulating mortgage brokers. During the last session, at the request of one mortgage banker, an exemption was included for mortgage bankers who "dabbled" by originating four or less loans per year. Since inception of the bill, they have found that exception to make the bill unenforceable when trying to regulate mortgage bankers. It is impossible to determine if these bankers are doing four or forty loans. She said that they have worked with the Division of Banking on a revised fiscal note.

**{Tape: 1; Side: A; Approx. Time Counter: 2.9 - 4.6; Comments: Rep. Wells entered hearing.}**

**Cyndy Rigler, Montana Association of Mortgage Bankers**, explained that a mortgage broker is someone who brokers loans through a third party lender (secondary market). A mortgage banker is an entity that also brokers loans, but does so by using their own funds. After the transaction has been closed, they can package that loan and transfer it to a third party. The purpose of this legislation is consumer protection, so that the State Banking Division has the ability to regulate this industry.

**Kay James, Mann Mortgage**, said that their company operates as both mortgage brokers and mortgage bankers. She said that they support SB 274 because it will protect Montana consumers.

**Annie Goodwin, Commissioner of Banking and Financial Institutions**, said that they have worked closely with the association to revise the fiscal note.

**{Tape: 1; Side: A; Approx. Time Counter: 4.6 - 9.8; Comments:  
Rep. Lenhart entered hearing.}**

**Steve Turkiewicz, Montana Bankers Association**, urged a "do concur" on SB 274.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. KAUFMANN** asked about he revised fiscal note. **SEN. BARKUS** said that he has not yet signed the fiscal note, but knows it is prepared. He said that it will show for FY06 revenue of \$83,000 with \$54,000 expenditure, and FY07 revenue of \$56,000 and expenditure of \$59,000.

**REP. MORGAN** asked, in referring to the three FTEs in the fiscal note, why the Banking Examiner Board couldn't handle this function. **Annie Goodwin** said that the revised fiscal note is for one FTE. The Banking Examiner Board is exclusively responsible for chartering new banks and is made up of lay people. The current examiners are specialized in either banking, trust, consumer finance, or mortgage lending; these examiners would need an intense amount of training in order to enforce this law. Two examiners currently are specialized for mortgage brokers; the additional FTE in SB 247 will oversee the licensing of 200 mortgage bankers.

**Closing by Sponsor:**

**SEN. BARKUS** asked the Committee for a "do concur."  
**{Tape: 1; Side: A; Approx. Time Counter: 9.8 - 16.8}**

**HEARING ON SB 108**

**Opening Statement by Sponsor:**

**SEN. DAVE LEWIS, SD 42, Helena**, opened the hearing on **SB 108**, a bill to revise laws governing certification of independent contractors. He said that he has presented this bill six different times, and would focus today on the fiscal impact. For the past several years, the Department of Labor (DOL) has been certifying independent contractors. By having this certification, the contractor could make the choice of whether or not they wanted to purchase workers compensation insurance. The employer did not have to workers compensation to a certified independent contractor. This was eventually challenged in court and the Montana Supreme Court ruled that it was an inappropriate

certification and ruled that the employer needed to provide the insurance. They said that independent contractor certifications need to be done more thoroughly, and the DOL should do follow up audits of these contractors. If not, then they need to be provided workers compensation just like any other employee. The fiscal note shows that the fees (\$125 biennially) charged for certification will generate the revenue necessary to cover the DOL's expenses. An amendment to HB 2 would place money there, contingent upon passage of SB 108.

**Proponents' Testimony:**

**Keith Kelly, DOL Commissioner,** said that SB 247 is a result of the work of the 2003 Advisory Committee, which includes representatives from government and businesses. He said that it is important to the 30,000 independent contractors, organized labor and workers compensation insurers. It will return certainty and fairness to the independent contractor exemption certificate, so that all parties involved can depend upon the authenticity of the certificate.

**EXHIBIT (aph71a01)**

**Jerry Keck, DOL,** said that his department implements the independent contractor certification program. The interim Advisory Committee wanted to continue to maintain the certification program in order to exempt these contractors from the Workers Compensation Act. They also wanted a comprehensive education program that would inform everyone involved as to what is means to be free from direction and control. He said that everyone needs to know that is certainty to the certificate and that they can count on it to be accurate. SB 108 would establish a stricter review of the initial application, a Web-based data program would be developed, a comprehensive education program, and six auditors to verify the independent business nature and control standards.

**Dave Cogley, Helena,** said that he is both an independent contractor and an employer of independent contractors. Being self-employed, he chooses to carry general health insurance for himself and his family, as opposed to paying for workers compensation insurance. As a self-employed business person, he said he should not be forced to provide workers compensation for the independent contractors he hires. He said that SB 108 is vital to the construction industry, because it provided needed protection both for the person employing the independent contractor and the independent. He said that the cost of the program is justified because of the certainty that it gives to the public. If they do not have this legislation, they would probably be looking at mandatory workers compensation coverage.

**Cory Hegreberg, Montana Contractors Association, Montana Motor Carriers, Montana Logging Association,** said that all three associations were participants in the interim study and support SB 108. The Montana Contractors Association maintains a self-insurance workers compensation risk pool. He said that since the lawsuit, the self-insurance risk has become too high. The Supreme Court decision has mandated that every person on a job site must be covered by workers compensation insurance. Therefore, the independent contractor certification as it now exists, is useless. Until SB 108 passes and the certification process is deemed enforceable and credible, the trustees of the self-insurance pool will continue to require that all employees be covered.

*{Tape: 1; Side: A; Approx. Time Counter: 16.8 - 32.6; Comments: End of Side A}*

**Barb Ranf, Montana Chamber of Commerce,** said that this is an incredibly important bill and the funding is justified.

**Nancy Schlepp, Montana Farm Bureau Federation,** said that people in agriculture often use independent contractors and feel that this is an important bill.

**Riley Johnson, National Federation of Independent Business,** said that they participated on the interim committee. He said that SB 108 would cover many types of businesses, not just construction.

**Harold Blattie, Montana Association of Counties,** urged passage of the bill.

The following people rose to express support for SB 108:

**Byron Roberts, Montana Building Industry Association  
Jason Miller, United Brotherhood of Carpenters  
Bob Worthington, Montana Municipal Insurance Authority  
Glenn Oppel, Montana Association of Realtors  
Shawn Bubb, Montana School Boards Association  
Robin Cunningham, Fishing Outfitters Association of Montana  
Nancy Butler, Montana State Fund  
Larry Kibbee, Property Casualty Insurance Association of America**

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.9}*

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. MORGAN**, in referring to the fiscal note, asked why none of the auditors for this program are being placed in Billings.

**Jerry Keck** said that there are two existing DOL auditors in Billings that would be cross-trained on this law.

**REP. SESSO** asked if business feels that this is a good use of government money. He also asked if it was a fixed or sliding fee. **Cary Hegreberg** said that the large number of contractors in Montana think that the funding is justified because they think the certification process needs to be enforced. He said that businesses support this growth in government because the alternative is mandatory workers compensation. **Jerry Keck** said that everybody would pay the \$125 set fee. They would eliminate the current \$17 fee, which has resulted in a fund balance of \$360,000, and replace it with the \$125. After the initial implementation, primarily of the Web data base, they will review the fee and consider reducing it.

**Closing by Sponsor:**

**SEN. LEWIS** said that independent contractors have told him that the two-year \$125 certification fee is cheaper than having required workers compensation. He said that **REP. MCKENNEY** would carry this bill in the House.

**{Tape: 1; Side: B; Approx. Time Counter: 5.9 - 15.5}**

**HEARING ON SB 498****Opening Statement by Sponsor:**

**SEN. JERRY BLACK, SD 14, Shelby**, opened the hearing on **SB 498**, a bill to increase the limit for loans from the Renewable Resource Grant and Loan program to certain water users. The Pondera County Canal and Reservoir Company (PCCRC) is planning for a major rehabilitation project on the East Dam of Lake Frances. SB 498 would provide a source of funding for private irrigation companies to obtain long-term, low-interest loans. Many of these irrigation projects are aging and are in significant need of repair. Since they are private, not public, entities the availability of State loan and grant funds are practically nonexistent. PCCRC would you use \$3 million of loan authority to rebuild and rehabilitate the East Dam of Lake Frances; the entire project would cost \$6 million to increase. This bill was amended in committee to also increase the loan limit to private individuals from \$200,000 to \$400,000.

**Proponents' Testimony:**

**Gerald Miller, PCCRC**, said that the East Dam was constructed as an earth dam in 1908 and is now falling apart. Due to it's decrepit condition, they are only able to extract half of its capacity. Water from the dam supplies the City of Conrad, and they are a major shareholder in the rehabilitation project.

**Rep. Llew Jones, HD 27**, said that the East Dam irrigates about 80,000 acres and supplies water to the City of Conrad, to a Minuteman missile site and provides recreation opportunities. From the exterior the dam looks nice, but interior is falling apart. The total rehabilitation project will cost \$6 million and they are asking the State for a \$3 million guaranteed loan.

**Mary Sexton, Director of Department of Natural Resources and Conservation (DNRC)**, said that there are number of water projects statewide where private entities have been unable to take advantage of State funding. SB 498 could be of benefit to many of these projects. She said that she thought the funding is a critical piece to the economy of northern Montana.

**Matt Jergerson, Morrison-Maierle Engineers**, said that their company is working for PCCRC. He said that PCCRC has operated well over the past 100 years as a non-profit company.

[EXHIBIT\(aph71a02\)](#)

[EXHIBIT\(aph71a03\)](#)

**Mike Murphy, Montana Water Resources Association**, said that projects like this represent a huge benefit to the State, including agriculture and recreational activities. SB 498 provides a reasonable alternative to these private water entities, where otherwise, financing would be difficult.

**Gary Amestoy, numerous water clients**, said that increasing the loan limit for a private person from \$200,000 to \$400,000 would be a great help to irrigating operations.

**Opponents' Testimony:** None

**Informational Testimony:**

**John Tubbs, DNRC**, said that the Senate amended the bill to state that the \$3 million is a "window of opportunity," with a two-year termination date. He said that they wanted to see how the program would work over the next two years before they approved it as a long-term program. They don't know what the demand will be for loans greater than \$300,000. There are many water users associations that may be interested in loans through this

program. The loans are at favorable market rates, which pay for the department's interest costs on the loan; therefore, they are not subsidized loans.

**{Tape: 1; Side: B; Approx. Time Counter: 15.5 - 32.6; Comments: End of Tape 1}**

The purpose of SB 498 is to give DNRC the authority to grant these loans at a higher dollar amount, not to grant a specific loan to PCCRC. The DNRC will review PCCRC's financials in order to make a decision of whether or not to make the loan. He reminded the Committee that if the loan is granted, it is only for 50% of the total project.

**Questions from Committee Members and Responses:**

**REP. KAUFMANN** asked if three more large projects came in requesting loans, who would make the decision. **John Tubbs** said that the decisions are made by a DNRC loan team, along with the assistance of Department of Environmental Quality.

**REP. MORGAN** said that she likes the loan process, and asked how this bill relates to the money appropriated to rehabilitate the St. Mary's Canal. **John Tubbs** said that the St. Mary's project is very different from this because the estimated cost of rehabilitating that canal is \$130 million. In HB 540 the State appropriated \$10 million for this project and they are trying to secure another \$100 million from the federal government. The users of the St. Mary's Canal are local governments, which have the ability to seek federal grants.

**REP. SESSO** asked how the DNRC will let private water users know about this increased loan limit, especially since there is only a two-year window of opportunity. **John Tubbs** said they have no specific marketing plan, but they will be getting the word out to irrigation systems providers and engineering companies.

**REP. SESSO** asked if they have had previous loan applicants who wanted the loan limit to be greater than \$300,000. **John Tubbs** said that the Paradise Canal group had wanted to borrow more than that limit for work on their diversion dam. He said that there are currently 20 individual borrowers at the \$200,000 limit and three who are at the \$300,000 limit.

**Closing by Sponsor:**

**SEN. BLACK** said that SB 498 is a good for all of Montana because it addresses a problem for private water users. He asked the Committee for a "do concur."



**ADJOURNMENT**

Adjournment: 5:00 P.M.

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REP. ROSALIE (ROSIE) BUZZAS, Chairman

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MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

**EXHIBIT ([aph71aad0.TIF](#))**